

Message Text

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ORIGIN OPIC-12

INFO OCT-01 NEA-14 ISO-00 RSC-01 AID-20 CIAE-00 COME-00

EB-11 FRB-03 INR-11 NSAE-00 TRSE-00 XMB-07 SP-03

CIEP-02 LAB-06 SIL-01 OMB-01 L-03 IGA-02 /098 R

66613

DRAFTED BY: OPIC/GC:SFRANKLIN

APPROVED BY: EB/IFD/OIA:CELLIS

OPIC/GC: CECIL HUNT

EB/IFD/OIA:TBRODERICK

NEA/INS:DBORN (INFO)

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P 222345Z JQL 74

FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI PRIORITY

UNCLAS STATE 158936

E.O. 11652: N/A

TAGS: EFIN I

SUBJ: SHAMA FORGE LITIGATION, AID LOAN NO. 386-E-116

REF: A(STATE 127297; B) STATE 201441; C) OPIC MEMO OF OCT 23, 1973;
D) STATE 116918; E) NEW DELHI 9627

SUMMARY:

MEMORANDUM OF UNDERSTANDING RE COOLEY LOAN ADMINISTRATION HAS BEEN EXTENDED INDEFINITELY. NEVERTHELESS OPIC WISHES TO UNDERSCORE THAT OPIC'S AUTHORITY TO SUE ON REFERENCE LOAN NOT REPEAT NOT DEPENDENT ON MEMORANDUM OF UNDERSTANDING BUT IS FOUND IN U.S. LAW AND VALID DELEGATION OF GOVERNMENTAL AUTHORITY.
END SUMMARY.

2. MEMORANDUM OF UNDERSTANDING EXTENDED (A) THROUGH FISCAL YEAR OF 1973 BY LETTER EXCHANGE DATED NOVEMBER 22, 1972, (B) THROUGH FISCAL YEAR 1974, BY LETTER EXCHANGE DATED MAY 30, 1973,
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AND (C) INDEFINITELY BY AMENDMENT DATED JULY 18, 1974. COPIES BEING POQCHED.

3. CONCERN OF BACHARA STATED REF E RE MEMORANDUM OF UNDERSTANDING AGAIN RAISES CONCERN OF OPIC EXPRESSED IN REFS B, C, AND D AND DURING TDY VISIT BY OPIC COUNSEL FRANKLIN. NOTWITHSTANDING THE REQUIREMENT OF U.S. DEPARTMENT OF JUSTICE STATED REF A THAT SUIT BE IN OPIC'S NAME AND NOT U.S.A., OPIC IS SUEING NOT AS AN ASSIGNEE OF THE AID LOAN BUT AS THE AGENCY OF U.S. GOVERNMENT CHARGED WITH THE DUTY OF EXERCISING THE RIGHTS OF THE GOVERNMENT ON BEHALF OF U.S.A.

4. BRIEFLY THE LEGAL ARGUMENT FOR OPIC'S AUTHORITY TO BRING SUIT IS AS FOLLOWS: (A) AUTHORITY OF UNITED STATES GOVERNMENT TO EXERCISE ITS LEGAL RIGHTS THROUGH AGENCIES THEREOF IS DETERMINED SOLELY BY THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA; (B)NFOR PURPOSES OF THE ADMINISTRATIVE LAW GOVERNING THE OPERATIONS OF U.S. GOVERNMENT INSTITUTIONS, A.I.D. AND OPIC ARE EXECUTIVE AGENCIES OF THE UNITES STATES BY DEFINITION. 88 STAT 399(1966), 5. U.S.C. SECTION 105. SECTION 231 OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED (THE "FAA") FURTHER PROVIDES IN PART THAT OPIC QUOTE SHALL BE AN AGENCY OF THE UNITED STATES UNDER THE POLICY GUIDANCE OF THE SECRETARY OF STATE UNQUOTE. 22 USC SECTION 2391;

(C) MISSION AWARE OF COOLEY LOAN REDELEGATION FROM PRESIDENT THROUGH SECRETARY OF STATE TO AID. A.I.D. REDELEGATION OF AUTHORITY NO. 91, DATED MAY 21, 1974, AN AUTHENTICATED COPY OF WHICH WAS FORWARDED VIA REF C, CONSTITUTES A VALID REDELEGATION OF SUCH AUTHORI

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TY, UNDER THE LAW OF THE UNITED STATES, AND THEREBY LAWFULLY AUTHORIZES OPIC TO EXERCISE THE RIGHTS OF A.I.D. AND THE U.S. ARISING FROM THE LOAN TO SHAMA FORGE; AND (D) UNDER FAA SECTION 239(D)

)
22 USC SECTION 2199(D) OPIC IS EXPRESSLY AUTHORIZED OPIC QUOTE TO SUE AND BE SUED IN ITS CORPORATE NAME. UNQUOTE NOTE: REPAYMENT OF LOANS STILL MADE TO AID FOR USE BY U.S. GOVERNEMENT. THUS, IN FACT, LOAN NEVER ASSIGNED TO OPIC.

5. RAO SHOULD DISCUSS FOREGOING PARAGRAPH WITH BHARUCHA AND PROVIDE COPIES OF QUOTED STATUES AND COPY OF CABLE. OPIC BELIEVES REJOINDER SHOULD EXPRESSLY DENY STATEMENT THAT UNCLASSIFIED

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RIGHTS OF OPIC DETERMINED SOLELY BY INDIAN LAW OF ASSIGNMENT. OPIC BELIEVES PLEADING SHOULD EXPRESSLY STATE THAT MATTER OF OPIC RIGHTS TO SUE ON LOAN AGREEMENT AND GUARANTY ARE DETERMINED SOLELY BY U.Y. LAW. OPIC UNDERSTANDS THAT INDIA FOLLOWS RULS THAT APPLICABILITY OF FOREIGN LAW MUST BE PLEADED OR EVIDENCE MAY NOT BE OFFERED TO ESTABLISH SUCH LAW.

6. TEXT OF LETTERS EXTENDING MEMO. OF UNDERSTANDING AS FOLLOWS:

A. NOVEMBER 22, 1967. ADDRESSED TO HOM. JOHN A. HANNA:

QUOTE

I REFER TO CERTAIN MEMORANDUM OF UNDERSTANDING ENTERED INTO BETWEEN AID AND OPIC DATED MAY 24, 1971 PURSUANT TO THE TERMS OF WHICH OPIC ADMINISTERS THE COOLEY LOAN PROGRAM ON BEHALF OF AID. PARAGRAPH 5 OF THE AGREEMENT PROVIDES THAT THE AGREEMENT SHALL EXTEND THROUGH FY 1972 AND MAY BE EXTENDED BY AGREEMENT OF AID AND OPIC. AS THIS AGREEMENT HAS PROVIDED A WORKABLE ARRANGMENT, I HEREBY PROPOSE THAT IT BE EXTENDED THROUGH FY 1973. IF YOU AGREE, COULD YOU SIGN TWO COPIES OF THIS LETTER, RETURNING ONE COPY TO ME.

UNQUOTE

OPIC BY /S/ HERBERT SALZMAN, EXECUTIVE VIP.

AGREED AND ACCEPTED

AID

BY: /S/ JAMES T. CAMPBELL (ASS. ADMIN.)

NOV. 22, 1972

B. LETTER OF NOV 30, 1963 ALSO TO HON. JOHN A. HANNAH

QUOTE

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OPIC HAS ADMINISTERED THE COOLEY LOAN PROGRAM ON BEHALF OF AID PURSUANT TO AN AGREEMENT ENTERED INTO ON MAY 24, 1971 (COPY ATTACHED). THE AGREEMENT PROVIDES THAT IT IS TO EXTEND FOR FY 1972 AND MAY BE FURTHER EXTENDED BY AGREEMENT OF THE PARTIES. THE AGREEMENT WAS EXTENDED FOR FY 1973.

IN ORDER THAT THIS MUTUALLY BENEFICIAL ARRANGEMENT CONTINUE, I PROPOSE THAT THE AGREEMENT BE EXTENDED THROUGH FY 1974. IF YOU ARE IN ACCORD WITH THIS, COULD YOU SIGN AND RETURN ONE COPY OF THIS LETTER.

UNQUOTE

/S/ BRADFORD MILLS (OPIC PRES.)

AGREED AND ACCEPTED:

/S/ JOHN A. HANNA

C. AMENDMENT TO MEMORANDUM:

QUOTE

SECTION 3 OF THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE AGENCY FOR INTERNATIONAL DEVELOPMENT
AND THE OVERSEAS PRIVATE INVESTMENT CORPORATION,
DATED MAY 24, 1971, RELATING TO THE ADMINISTRATION
OF THE "COOLEY LOAN" PROGRAM AS AMENDED HEREBY
TO READ AS FOLLOWS:

:3. TERM OF AGREEMENT

THIS AGREEMENT SHALL CONTINUE INDEFINITELY, SUBJECT
TO TERMINATION AT THE OPTION OF EITHER OPIC OR AID.
IN THE EVENT CIRCUMSTANCES ARE SUCH THAT EITHER OPIC
OR AID DEEMS IT NECESSARY OR DESIRABLE TO TERMINATE
THIS AGREEMENT, OPIC AND AID WILL CONSULT IN ADVANCE
OF SUCH TERMINATION, AND WILL, INsofar AS POSSIBLE,
FIX A TERMINATION DATE SUFFICIENTLY IN ADVANCE SO
THAT THE PARTIES MAY MAKE PERSONNEL AND OTHER ADJUST
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MENTS IN THEIR OPERATIONS IN LIGHT OF SUCH TERMINATION."

FOR AGENCY FOR INTERNATIONAL FOR THE OVERSEAS PRIVATE
DEVELOPMENT INVESTMENT CORPORATION

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/S/ DANIEL PARKER	/Y/ MARSHALL T. MAYS
ADMINISTRATOR	PRESIDENT
JUNE 29, 1974	JULY 19, 1974

7. PLEASE ADVISE VIA CABLE FOLLOWING MEETING WITH BHARUCHA. KISSINGER

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NNN

*** Current Handling Restrictions *** n/a

*** Current Classification *** UNCLASSIFIED

Message Attributes

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Current Classification: UNCLASSIFIED
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Copy: SINGLE
Draft Date: 22 JUL 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE158936
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Document Unique ID: 00
Drafter: OPIC/GC:SFRANKLIN
Enclosure: n/a
Executive Order: n/a
Errors: n/a
Film Number: D740198-0027
From: STATE
Handling Restrictions: n/a
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ISecure: 1
Legacy Key: link1974/newtext/t19740787/aaaheac.tel
Line Count: 219
Locator: TEXT ON MICROFILM, TEXT ON-LINE
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Review Exemptions: n/a
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US Department of State
EO Systematic Review
30 JUN 2005

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Review Withdrawn Fields: n/a
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TAGS: EFIN, IN, OPIC, SHAMA FORGE LTD
To: NEW DELHI
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005